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AND SERGEANT EDWARD KINNEY**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DARREN "PETE" WHITE

Plaintiff,

vs.

**CITY OF LOS ANGELES; CHIEF
CHARLIE BECK**, in his official
capacity; **SERGEANT EDWARD J.
KINNEY** and **DOES 1 through 10**,

Defendants.

CASE NO. CV17-03306 SJO-MRWx
Honorable S. James Otero

**DEFENDANTS' MEMORANDUM
OF FACT AND LAW**

Pre-Trial Conference: Aug. 13, 2018

Trial: Aug. 21, 2018

DEFENDANTS hereby file their Memorandum of Contentions of Fact and Law pursuant to Local Rule 16-4.

I. FACTS

On June 14, 2016, Los Angeles Police Department Sergeant Edward Kinney was assigned to the Resources Enhancement Service Enforcement Team (RESET), as the unit Assistant Officer in Charge. The City of Los Angeles, in response to a May 2012 Notice of Violation by the Los Angeles County Health Department and in order to create and maintain a safer, cleaner environment for the

1 general public has tasked the L.A. Sanitation Watershed Protection Division,
2 Environmental Enforcement and Emergency Response Unit with systematic
3 clearing of the Skid Row area. Approximately every two months, for a seven day
4 period, specific streets in the Skid Row area are designated for comprehensive
5 cleaning. In order to accomplish this mission, notices from L.A. Sanitation are
6 posted 48 hours in advance in the scheduled cleaning area. The posted notices
7 inform the homeless population of the sanitation efforts, affording them ample
8 time to remove their belongings, tents, encampments and bulky items, prior to the
9 street closures. Entities from the Watershed and Clean Harbors utilize power
10 washers and chemicals to accomplish the cleaning, to rid the area of harmful
11 infectious materials and biohazardous waste that accumulates in the streets and
12 sidewalks due to the overwhelming homeless population. Also, to provide
13 protection to the city and contract workers from interference and physical assault,
14 as they do their jobs.

15 RESET units were assigned to help facilitate the street closures, along with
16 two units from Department of Transportation, to ensure there was no traffic on the
17 road and no pedestrian traffic on the sidewalks. The hard closure was posted for
18 6th Street from Wall to Gladys. The street closure was complete with posted
19 officers and yellow tape (Los Angeles Police Department Police Line Do Not
20 Cross) was strung on 6th Street from Wall to Julian. No vehicle or pedestrian traffic
21 was allowed to flow eastbound and all vehicle/pedestrian traffic was disallowed
22 through the intersection at San Julian. Due to the chemicals utilized in the cleaning
23 and the health hazards such as needles, sharps and biohazardous materials and
24 human feces that remain after the homeless persons in the area depart the location,
25 citizens are not permitted to be present during the cleaning.

26 At 6:15 a.m., officers issued warnings to the transients in the area along 6th
27 Street, advising them of the imminent closure. The hard closure began at 8:00 am.
28 The City vehicles, dump trucks and equipment utilized by Street Services were
pulling onto the street in preparation for the clean up. An individual refused to

1 remove his make-shift lodging from the sidewalk designated for cleaning. The
2 individual refused to exit his lodging and comply with officers in violation of
3 41.18(a)(1) LAMC, resisting/obstructing officers. After 6th Street and the Sn
4 Julian intersection were blocked off and the Police Line tape were affixed to block
5 pedestrian traffic, a field supervisor and several units were redeployed from the
6 mission, to affect the arrest of this individual. A tactical plan was formulated to
7 the arrest of the individual who refused to leave his make-shift lodging. His
8 lodging was located on the south curb, mid-block between San Julian and Wall.

9 At approximately 8:20 a.m., Sergeant Kinney observed Darren "Pete"
10 White, cross over the Police Line Tape and pass the crosswalk into the intersection
11 at 6th and San Julian.

12 White was ordered to get back behind the yellow tape before officers
13 responded with units to deal with the individual who would not leave his make-
14 shift shelter. Sergeant Kinney advised White that he would be arrested if he did
15 not comply.

16 After the delay and distraction caused by White, Sergeant Ramirez and
17 several designated officers responded to the lodging of the individual who refused
18 to leave. After continuing to comply, the individual was placed under arrest after
19 a short standoff, resulting in a use of force due to him resisting arrest. He was then
20 arrested.

21 Suspect White was observed a third and fourth time, walking out into the
22 street, across the yellow tape to film the arrest of the homeless man who refused to
23 leave his make-shift shelter. Other persons observing White's disregard of the
24 yellow tape, began crossing the street. This created a potentially dangerous
25 situation for the officers and the public by diverting and delaying the police efforts
26 to apprehend and arrest the man who refused to leave his tent on the sidewalk.

27 Once that man on the sidewalk was taken into custody and while Sergeant
28 Ramirez and the officers were still in the process of controlling the scene, Sergeant
Kinney walked over to San Julian and warned the two individuals who had crossed

1 back behind the yellow tape, telling them that if they crossed again they would be
 2 arrested. Sergeant Kinney advised these two persons that they were free to film
 3 whatever they wished, but they could not cross the Police Line.

4 Sergeant Kinney had given White multiple warnings, including several
 5 given from a distance, while attempting to deal with the homeless individual who
 6 refused to leave his tent. Officer attention was diverted multiple times due to
 7 White's actions, delaying officer efforts to deal with an uncooperative suspect in a
 8 tent who refused to exit. Sergeant Kinney observed White pushing thru the yellow
 9 tape, stretching it approximately eight feet into the intersection, defeating the
 10 purpose of the tape. Due to all of White's actions, Sergeant Kinney walked over to
 11 White and asked him for his identification. Kinney advised White that he was
 12 going to be placed under arrest. Kinney walked back to the area where the man in
 13 the tent was being arrested, and once that scene was under control, he directed
 14 officers to arrest White under arrest for 148(a)(1) Penal Code, for obstructing and
 15 delaying officers during the course of their duties.

16 **II. PLAINTIFF'S CLAIMS**

17 Plaintiff brings the following claims:

18 Claim 1: 42 U.S.C. Section 1983 and Cal. Constitution— violation of right to
 19 free speech;

20 Claim 2: 42 U.S.C. Section 1983 and Cal. Constitution – “Retaliation”

21 Claim 3: 42 U.S.C. Section 1983 and California Constitution for “unlawful
 22 seizure”

23 Claim 4: Violation of 14th Amendment liberty interest to be free from
 24 unlawful arrest per 853.6, Penal Code

25 Claim 5: Violation of California Civil Code 52.1

26 Claim 6: False Imprisonment

27 Claim 7: False Arrest without Warrant

28 Claim 8: Monell violation against Citizen journalists

1 **III. DEFENDANTS' EVIDENCE IN OPPOSITION TO EACH CLAIM**

2 For each claim, defendants will present the testimony of the involved
 3 Officers to explain that their actions were done in response to Plaintiff's
 4 interference, and had nothing to do with plaintiff's First Amendment rights. The
 5 officers will explain their interaction with Plaintiff, the threat that was posed to the
 6 officers, the behavior of Plaintiff, to establish that officers acted reasonably given
 7 the totality of the circumstances. Defendants will show that the officers' conduct
 8 complied with reasonable police practices and the law and that Plaintiff interfered
 9 with the officers and was lawfully arrested.

10 **IV. DEFENDANTS' COUNTERCLAIMS AND AFFIRMATIVE**

11 **DEFENSES**

12 Defendants are not pursuing any counterclaims against Plaintiff but will
 13 pursue the affirmative defense of qualified immunity.

14 **V. ELEMENTS TO AFFIRMATIVE DEFENSES**

- 15 1. Whether Defendants' alleged conduct violated a constitutional right;
- 16 2. If a constitutional right was violated, whether the constitutional right
 17 was "clearly established." See Saucier v. Katz, 533 U.S. 194, 200 (2001); Ramirez
 18 v. City of Buena Park, 560 F.3d 1012, 1020 (9th Cir. 2009).

19 **VI. EVIDENTIARY PROBLEMS**

20 Evidentiary issues have been raised in Plaintiffs' motions in limine which
 21 will be heard on the first day of trial.

22 **VII. ISSUES OF LAW**

- 23 1. Whether the force Defendants against Plaintiff violated his Fourth
 24 Amendment rights;
- 25 2. Whether the officers violated Plaintiff's First Amendment rights;
- 26 3. Whether the officers are entitled to Qualified Immunity.

27 **VIII. BIFURCATION OF ISSUES**

28 The parties have stipulated that the trial may be bifurcated into a (1) liability

1 and damages phase; and a (2) punitive damages phase, if needed.

2 Dated: July 23, 2018

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6 By: /s/ *Elizabeth T. Fitzgerald*.
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